

**Congress of the United States**  
**Washington, DC 20515**

August 5, 2022

The Honorable Gary Gensler  
Chair  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chair Gensler,

We are writing to request that the Securities and Exchange Commission (SEC) rescind its rulemaking on “The Enhancement and Standardization of Climate-Related Disclosures for Investors”<sup>1</sup> given the United States Supreme Court’s recent decision in *West Virginia v. Environmental Protection Agency*.

As you know, the Court held that Congress did not grant the Environmental Protection Agency (EPA) in Section 111(d) of the *Clean Air Act* the authority to devise emissions caps based on the generation shifting approach it took in the Clean Power Plan.<sup>2</sup> Citing the Major Questions Doctrine, the Court reasoned that there are “extraordinary cases” in which the “history and the breadth of the authority that [the agency] has asserted,” and the “economic and political significance” of that assertion, provide a “reason to hesitate before concluding that Congress” meant to confer such authority.<sup>3</sup> It found that “Congress intends to make major policy decisions itself, not leave those decisions to agencies,” and that agencies “must point to clear Congressional authorization” for the power that they claim.<sup>4</sup> The EPA’s attempt to force a nationwide transition away from the use of coal was deemed to be outside of the authority granted to the agency because “a decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”<sup>5</sup>

Last month, in a letter sent to you by Ranking Member Patrick McHenry and 130 House Republicans, we warned that this proposal “exceed[s] the SEC’s statutory authority and misappropriate[s] the SEC’s rulemaking authority.”<sup>6</sup> This Supreme Court decision casts serious doubt on the SEC’s authority to finalize and implement its broad-sweeping climate disclosure rulemaking because the SEC’s exercise of regulatory authority to conduct climate policy would require a “clear delegation” of authority from Congress. The Commission’s proposed rule states that it has “broad authority” under the *Securities Act of 1933*<sup>7</sup> and the *Exchange Act of 1934*,<sup>8</sup> but nothing in these statutes gives the SEC the ability to conduct climate policy, let alone regulate greenhouse gas emissions. The SEC should have heeded Commissioner Hester Peirce’s dissent stating that “this proposal steps outside [the] statutory limits by

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<sup>1</sup> Release No. 33-11042, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21, 334 (Apr. 11, 2022).

<sup>2</sup> 597 U.S. \_\_\_, 2022

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Letter from the Hon. Patrick McHenry and 130 House Republicans to the Hon. Gary Gensler dated June 15, 2022, available at [https://republicans-financialservices.house.gov/UploadedFiles/2022-06-15\\_GOP\\_Letter\\_to\\_Gensler\\_reClimate\\_Rules\\_Final\\_Updated.pdf](https://republicans-financialservices.house.gov/UploadedFiles/2022-06-15_GOP_Letter_to_Gensler_reClimate_Rules_Final_Updated.pdf)

<sup>7</sup> 15 U.S.C. 77.

<sup>8</sup> 15 U.S.C. 78.

using the disclosure framework to achieve objectives that are not [the SEC's] to pursue.”<sup>9</sup> As we noted in our letter to you last month, this rulemaking involves major questions related to climate policy that we believe, and a court would likely find, should be left to Congress.

We again respectfully ask that you rescind this rulemaking and spare the public unnecessary litigation costs. If you plan to move forward with this rulemaking, we request that you cite to an authority that *expressly* grants the SEC the authority to engage in climate policy by **August 19, 2022**.

Sincerely,



John Rose  
Member of Congress



Patrick McHenry  
Member of Congress



Frank D. Lucas  
Member of Congress



Pete Sessions  
Member of Congress



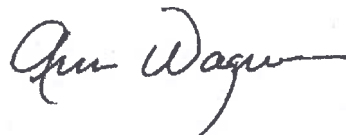
Bill Posey  
Member of Congress



Blaine Luetkemeyer  
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Bill Huizenga  
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Ann Wagner  
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Andy Barr  
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Roger Williams  
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<sup>9</sup> Statement from Hon. Hester Peirce dated March 21, 2022, available at <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>



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